



1 XINGFEI LUO  
2 PO BOX 4886,  
3 El Monte, CA 91734

4  
5 Petitioner in Pro Se

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7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 XINGFEI LUO,  
12 Petitioner,  
13 v.  
14 THE PEOPLE OF THE STATE OF  
15 CALIFORNIA  
16 Respondent.

No. 8:22-CV-01640-MEMF-KES

**PETITIONER'S OBJECTIONS TO  
MAGISTRATE JUDGE'S JULY 31,  
2023 ORDER**

Action filed: September 6, 2022

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18  
19 Pursuant to Fed. R. Civ. P. 72(a), Xingfei Luo (Petitioner) respectfully submits her  
20 objections to Magistrate Judge's July 31, 2023 Order granting Respondent's belated  
21 motion for an extension of time to file response to the First Amended Petition (FAP) (the  
22 "Order"). ECF 36.

23 **PROCEDURAL HISTORY**

24 On September 6, 2022, Petitioner filed a petition for writ of habeas corpus  
25 asserting 34 claims of relief. ECF 1. On November 9, 2022, Michael Butera (Butera)  
26 entered his appearance on behalf of Respondent. ECF 15. On December 20, 2022 the  
27 magistrate granted *Rhines* stay allowing Petitioner to exhaust claims in state courts. ECF  
28 18. During the process of exhausting her claims in state courts, Petitioner consistently

1 provided regular updates to Butera by serving him with copies of her filings made in those  
2 state courts, including her exhaustion petition made to California Supreme Court. Luo  
3 Decl., ¶ 2.

4 On May 22, 2023 Petitioner's last status report was docketed advising that the  
5 California Supreme Court denied her exhaustion petition. ECF 26. The *Rhines* stay was  
6 lifted subsequently. ECF 27. On May 31, 2023, Petitioner requested Butera's written  
7 consent to amend her petition pursuant to FRCP Rule 15(a)(2). In her email to Butera,  
8 Petitioner requested Butera's response by June 3, 2023. Luo Decl., ¶ 3. Petitioner's  
9 request for written consent to amend her petition was a clear indication that the case was  
10 active and not subject to a stay, and that she intended to file the amended petition shortly.

11 After receiving no response from Butera, Petitioner moved for leave to amend her  
12 petition. ECF 29. On June 21, 2023 the magistrate granted Petitioner's motion for leave to  
13 amend her petition and ordered Respondent to respond to the FAP within twenty-one (21)  
14 days after it is docketed. ECF 32. On June 26, 2023, Petitioner's FAP, asserting 35 claims  
15 of relief (adding only one additional claim to the original petition), was docketed. ECF 33.  
16 Consequently, Respondent's deadline to response was due on July 17, 2023. As of July  
17 27, 2023, no motion for extension of time to file answer to petition for writ of habeas  
18 corpus was made, neither before the original time expired nor after the time had elapsed.  
19 Despite Respondent had over eight months to prepare a response to the FAP except claim  
20 35, without finding any good cause or excusable neglect, 10 days after the original time  
21 had expired, the magistrate extended, *sua sponte*, Respondent's deadline to respond to the  
22 FAP to August 1, 2023. ECF 34. On July 28, 2023, over 10 days after the original time to  
23 response had expired, Butera filed a belated motion for an extension of time to file  
24 response asserting that the Court's July 27, 2023 order extending time to respond was his  
25 first indication that the case was no longer stayed, which is refuted by Petitioner's request  
26 for written consent to amend petition. ECF 35. Without giving Petition any opportunity to  
27 respond, even before Petitioner had a chance to receive Respondent's belated motion  
28 through the mail, the magistrate granted Respondent's belated motion on July 31, 2023.

ECF 36.

## ARGUMENT

Where a magistrate judge's order relates to "a pretrial matter not dispositive of a party's claim or defense," the district judge "must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

The "clearly erroneous" standard applies to the magistrate judge's factual determinations and discretionary decisions. *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991) (discretionary non-dispositive pre-trial matters by magistrate judge are reviewable for clear error); *Maisonville v. F2 Am., Inc.*, 902 F.2d 746, 748 (9th Cir. 1990) (factual determinations made in connection with sanction award are reviewable for clear error). This standard requires "a definite and firm conviction that a mistake has been committed." *Security Farms v. Int'l Brotherhood of Teamsters*, 124 F.3d 999, 1014 (9th Cir. 1997).

The "contrary to law" standard applies to review of purely legal determinations by a magistrate judge. See, e.g., *Haines v. Liggett Grp. Inc.*, 975 F.2d 81, 91 (3d Cir. 1992) ("the phrase 'contrary to law' indicates plenary review as to matters of law."); *Med. Imaging Centers of Am., Inc. v. Lichtenstein*, 917 F.Supp. 717, 719 (S.D. Cal. 1996) ("Section 636(b)(1) . . . has been interpreted to provide for de novo review by the district court on issues of law."). "An order is contrary to law when it fails to apply or misapplies relevant statutes, case law, or rules of procedure." *Jadwin v. Cnty. of Kern*, 767 F.Supp.2d 1069, 1110-11 (E.D. Cal. 2011) (quoting *DeFazio v. Wallis*, 459 F.Supp.2d 159, 163 (E.D.N.Y. 2006)).

### **I. THE MAGISTRATE JUDGE EXCEEDED HER AUTHORITY TO EXTEND RESPONDENT'S DEADLINE TO RESPOND TO THE FIRST AMENDED PETITION TO AUGUST 1, 2023**

FRCP Rule 6(b) strictly requires the presence of good cause or excusable neglect to grant an extension of time and does not provide any discretionary power to do so

1 otherwise.

2 Before the original time or its extension expires, FRCP Rule 6(b)(1)(A) allows the  
3 Court to extend the time with or without motion or notice if the Court acts. In the present  
4 case, the original deadline for Respondent to respond to the FAP was July 17, 2023. ECFs  
5 32, 33. After the original time had already expired, the magistrate had no authority to act  
6 *sua sponte* to extend the deadline to August 1, 2023. Even assuming that the magistrate  
7 had discretionary power to extend the deadline, she abused her discretion by doing so  
8 without any finding of good cause.

9 Pursuant to FRCP Rule 6(b)(1)(B), a post-deadline extension must be "upon  
10 motion made," and is permissible only where the failure to meet the deadline "was the  
11 result of excusable neglect." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 873 &  
12 896, 110 S.Ct. 3177, (1990). As of July 27, 2023, there is no indication in the record that  
13 Respondent made a motion for an extension of time, nor is there any suggestion that  
14 Respondent's failure to respond was due to excusable neglect. Therefore, the magistrate's  
15 *sua sponte* extension of time to respond was unjustified with no valid basis. Extension  
16 under these circumstances doesn't serve the end of a "just, speedy, and inexpensive  
17 determination" of this action. See Fed. R. Civ. P. 1. See *Kyle v. Campbell Soup Co.*, 28  
18 F.3d 928, 931-32 (9th Cir. 1994) (reversing district court's enlargement of time to file fee  
19 petition because attorney failed to show excusable neglect); *Marshall v. Costco Wholesale*  
20 *Corp.*, CV 20-8850-DMG (Ex), at \*2 (C.D. Cal. Aug. 11, 2022) (noting that a request to  
21 continue or extend dates or deadlines that have already expired is presumptively a lack of  
22 due diligence.)

23 **II. THE JULY 31, 2023 ORDER BLATANTLY VIOLATED**  
24 **PETITIONER'S DUE PROCESS RIGHTS AND THEREFORE IS**  
25 **VOID**

26 The litigant must be provided with an opportunity to oppose the order before it is  
27 entered. Due process requires notice and an opportunity to be heard. See *De Long v.*  
28 *Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990).

1 The July 31, 2023 order purporting to grant Respondent's belated motion was  
2 issued by the magistrate without providing Petitioner the opportunity to address Butera's  
3 assertions. On July 28, 2023, Respondent served Petitioner **by mail** its motion for an  
4 extension of time to file response to the amended petition. ECF 35 at 5. The July 31, 2023  
5 order was issued even before Petitioner had a chance to receive the motion through the  
6 mail. Luo Decl., ¶4. This denial of an opportunity to be heard or to file objections severely  
7 hampers Petitioner's ability to defend her interests and present her arguments effectively.

8 As addressed by the United States Supreme Court in *Mullane v. Cental Hanover*  
9 *Bank & Trust, Co.*, 339 U.S. 306, 314 (1950), a basic requirement for an order or  
10 judgment to be accorded finality is that interested parties be apprised of the pending  
11 proceedings and an opportunity to present their objections before a judgment or order is  
12 issued. This opportunity to be heard is a fundamental requirement of due process under  
13 the United States Constitution. *Id.*

14 The Supreme Court addressed in *United Student Aid Funds, Inc. v. Espinosa*, 559  
15 U.S. 260, 270-271 (2010) the issue of whether an order was void when issued in error or  
16 merely one in which the error must be appealed, stating,

17 A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed.  
18 1933); see also *id.*, at 1709 (9th ed. 2009). Although the term "void"  
19 describes a result, rather than the conditions that render a judgment  
20 unenforceable, it suffices to say that a void judgment is infirmity may be  
21 raised even after the judgment becomes final. See Restatement (Second) of  
22 Judgments 22 (1980); see generally *id.*, § 12. The list of such infirmities is  
23 exceedingly short; otherwise, Rule 60(b)(4)'s exception to finality would  
24 swallow the rule.

25 A judgment is not "void," for example, "simply because it is or may have  
26 been erroneous." *Hoult v. Hoult*, 57 F.3d 1, 6 (CA11995); 12 J. Moore et  
27 al., *Moore's Federal Practice* § 60.44[1][a], pp. 60-150 to 60-151 (3d ed.  
28 2007) (hereinafter *Moore's*).

1 "An elementary and fundamental requirement of due process in any proceeding  
 2 which is to be accorded finality is notice reasonably calculated, under all of the  
 3 circumstances, to apprise interested parties of the pendency of the action and afford them  
 4 an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust*  
 5 *Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). Here, because Petitioner  
 6 was not given any opportunity to be heard, she clearly was not afforded due process.

7 An order is void if it is issued by a court in a manner inconsistent with the due  
 8 process clause of the Fifth Amendment. See, e.g., *Blumer*, 66 B.R. at 113; *In re Whitney-*  
 9 *Forbes, Inc.*, 770 F.2d 692 (7th Cir. 1985) (citing 11 C. Wright and A. Miller, *Federal*  
 10 *Practice and Procedure*, section 2862, page 200, (1973)).

11 By not allowing Petitioner to present her side of the case, the minimum of due  
 12 process, the court is essentially depriving her of the ability to assert her rights and protect  
 13 her interests adequately. The absence of an opportunity to respond not only deprives  
 14 Petitioner of her due process rights but also undermines the principles of a fair and  
 15 impartial legal process. This failure to afford Petitioner the fundamental right to be heard  
 16 casts doubt on the integrity of the court's proceedings and raises concerns about the  
 17 potential for arbitrary decisions.

### 18 **III. RESPONDENT FAILED TO SHOW EXCUSABLE NEGLIGENCE**

19 Respondent filed its belated motion after the initial deadline had expired.  
 20 Respondent's belated motion should be granted only where the failure to meet the  
 21 deadline "was the result of excusable neglect."

22 The Ninth Circuit dictates that a district court must apply a four-factor equitable  
 23 test to determine if a party's failure to meet a deadline constitutes "excusable neglect."  
 24 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010). The four factors  
 25 to consider are: "(1) the danger of prejudice to the opposing party; (2) the length of the  
 26 delay and its potential impact on the proceedings; (3) the reason for the delay; and (4)  
 27 whether the movant acted in good faith." *Id.* (citing *Pioneer Inv. Servs. Co. v. Brunswick*  
 28 *Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489 (1993)).



1                    **A. The Danger of Prejudice to The Opposing Party**

2                    Respondent's failure to file a timely response and its instant motion seeking  
3 extension adversely and significantly affect Petitioner's fundamental rights.

4                    On July 29, 2021 Petitioner was wrongfully convicted of three crimes and is  
5 **currently in the State's custody**. Since then Petitioner has worked tirelessly to vindicate  
6 her constitutional rights.

7                    In February 2023, Petitioner faced another prosecution for the same crime. ECF 28.  
8 Any further delay in resolving this case could expose her to the risk of yet another  
9 prosecution.

10                    Out of a misdemeanor conviction, the alleged "victim" claimed an astonishing  
11 \$107,720.76 in restitution, making it the largest restitution amount sought in American  
12 history. In June 2022, the superior court awarded restitution in the substantial amount of  
13 \$93,003.76, plus 10% interest. ECF 28 at 45-46. The 10% interest attached to the  
14 restitution translates into nearly \$800 in interest each month, placing an enormous burden  
15 on Petitioner's already challenging financial situation. The ongoing accrual of interest also  
16 makes Petitioner vulnerable to potential legal consequences and further hardships.

17                    Respondent's belated motion, seeking an extension of time, compounds the harm  
18 inflicted upon Petitioner in violation of her due process rights. Granting an extension  
19 without adequate justification further delays the proceedings, prolongs **restraint in**  
20 **Petitioner's liberty**, exacerbates her financial struggles, and perpetuates the uncertainty  
21 surrounding her constitutional rights, potentially another prosecution.

22                    As a wrongfully convicted individual currently in custody, Petitioner is particularly  
23 vulnerable, and any delay in the resolution of her case has a severe impact on her physical,  
24 psychological, and financial well-being.

25                    In a sharp contrast, Respondent's failure to file a response does not prejudice its  
26 substantial rights. The Ninth Circuit has expressly declared that a habeas corpus petitioner  
27 is not entitled to default judgment. *Gordan v. Duran*, 895 F.2d 610 (9th Cir. 1990). The  
28 failure to respond to claims raised in a petition for habeas corpus does not entitle the

petitioner to a default judgment. *Id.* at 612. The habeas petitioner still bears the burden of showing that he or she is in custody in violation of the constitution.

**B. The Length of The Delay And Its Potential Impact on The Proceedings**

Here, Respondent not only filed the instant motion 11 days after the original deadline had expired, but also sought a 77 days extension. Petitioner's email on May 31, 2023, served as a clear alert to Butera regarding the upcoming amended petition. Two months later until July 28, 2023, Respondent's 11 days delay, after the original time to respond had expired, in filing the instant motion is unreasonable.

**C. The Reason for The Delay**

It is beyond dispute that the CM/ECF notifications for all documents after Butera's initial appearance were electronically served on his email address:

[michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov).

However, in Butera's declaration, he attested that he received no ECF notifications of further activity in this case between May 22, 2023 and July 27, 2023—when he was notified of the Court's order extending the deadline for a response to Luo's Amended Petition to August 1, 2023. It is worth noting that the last docketed status report by Petitioner was on May 22, 2023. ECF 26. This date coincides with the document signaling the imminent lifting of the *Rhines* stay. Interestingly, it is also the same date when Butera stopped receiving ECF notifications. In addition, Butera did not provide an explanation for the sudden resumption of ECF notifications on July 27, 2023.

While it is evident that this court is currently handling a substantial number of active open cases, none of the attorneys involved in other cases have reported any issues with receiving ECF notifications. Given this fact, it is reasonable to consider two possibilities: either the ECF system selectively malfunctioned for Butera<sup>1</sup>, or his claim of not receiving ECF notifications is untrue. The latter scenario appears to be more plausible based on the totality of the circumstances and evidence.

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<sup>1</sup> To avoid further ECF system's selective "malfunction" for Butera, a courtesy copy of this document was directly sent to [michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov). Luo Decl., ¶5.



1 Further, if Butera truly had stopped receiving ECF notifications since May 22,  
 2 2023, after receiving Petitioner's request for written consent to amend the petition on May  
 3 31, 2023, it would have been incumbent upon him to discover the "malfunction" of ECF  
 4 notifications.

5 The mystery of the sudden disruption and subsequent resumption of ECF  
 6 notifications, combined with the intriguing timeline, ECF system's selective  
 7 "malfunction" for Butera, and his reckless failure to discover the ECF notification  
 8 "malfunction" raise significant doubts about the truthfulness of Butera's statements.

9 Upon review of Petitioner's May 31, 2023 email to Butera, it is clear that Butera  
 10 was not being forthright when he stated that the receipt of this Court's July 27, 2023 order  
 11 extending time to respond was his **first indication** that the case was no longer stayed. In  
 12 reviewing the chronology of the proceedings and correspondence, it seems most likely  
 13 that Butera filed the instant motion in order to stall the adjudication of this case after his  
 14 calculated failure to file a timely response to the FAP.

#### 15 **D. Whether The Movant Acted in Good Faith**

16 Bad faith "includes a broad range of willful improper conduct . . . ." *Fink v. Gomez*,  
 17 239 F.3d 989, 992 (9th Cir. 2001). The Supreme Court has described "bad faith" as fraud  
 18 practiced upon the court and conduct in which "the very temple of justice has been  
 19 defiled." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) (internal quotation omitted).  
 20 Unsurprisingly, the Ninth Circuit has held a party's misrepresentations or purposeful  
 21 deception constitutes bad faith. See *Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*,  
 22 210 F.3d 1112, 1118 (9th Cir. 2000) (affirming the district court's imposition of sanctions  
 23 for bad faith misrepresentations).

24 Butera's misrepresentation of his unawareness of the *Rhines* stay was lifted is an  
 25 act of bad faith. Petitioner's email to Butera on May 31, 2023, unmistakably indicates that  
 26 the case was active. Therefore, Butera's claim that he only became aware of the case's  
 27 active status through the Court's July 27, 2023 order to extend the response time appears  
 28 disingenuous. Intentionally misleading the court is bad faith conduct. *Avendano v. Sec.*

1 *Consultants Grp.*, 3:13-cv-00168-HDM-VPC, at \*18 (D. Nev. Dec. 2, 2014).

2 The Ninth Circuit has held tantamount to bad faith an attorney's failure to take  
3 remedial actions required by his ethical and professional obligations. See *Gomez v.*  
4 *Vernon*, 255 F.3d 1118, 1134-35 (9th Cir. 2001). Conduct is also tantamount to bad faith  
5 where counsel or parties act recklessly and in combination "with an additional factor such  
6 as frivolousness, harassment, or an improper purpose." *Fink*, 239 F.3d at 994. In the Ninth  
7 Circuit, improper purposes include the recitation of "weak" factual contentions "without  
8 reasonable and competent inquiry." *In re Girardi*, 611 F.3d 1027, 1062 (9th Cir. 2010).

9 After receiving Petitioner's request for written consent to amend the petition on  
10 May 31, 2023, Butera's failure to discover the ECF notification "malfunction" is reckless  
11 tantamount to bad faith, in combination with his frivolous claim that the Court's July 27,  
12 2023 order extending time to respond was his **first indication** that the case was no longer  
13 stayed.

14 **IV. RESPONDENT FAILED TO SHOW GOOD CAUSE FOR A 77 DAYS**  
15 **EXTENSION**

16 Respondent now requests until October 2, 2023 to file its response, a 77-day  
17 deviation from the initial deadline. The extended time requested by Respondent  
18 significantly disrupts the orderly and timely progression of the case. It hampers the  
19 efficiency of the court system and impairs Petitioner's right to a speedy and fair resolution  
20 of her claims. The delay places an undue burden on Petitioner, depriving her of a timely  
21 resolution to the legal matter at hand.

22 Butera seeks a 77-day extension, citing four other ongoing cases as justification.  
23 However, it is important to note that Butera had already entered his appearance on behalf  
24 of Respondent on November 9, 2022, providing him with **over eight months** to prepare a  
25 response to the FAP, with the exception of claim 35 (FAP contains only one additional  
26 claim beyond the original petition). Given that attorneys often handle multiple cases  
27 concurrently, Butera's claim of needing 77 days to respond fails to establish good cause  
28 for such a lengthy extension.

**CONCLUSION**

Based on the foregoing, Petitioner requests that the Court vacate the July 31, 2023 Order.

Respectfully submitted,

Date: August 1, 2023

/s/ Xingfei Luo

**DECLARATION OF XINGFEI LUO**

I, XINGFEI LUO, declare and state:

1. I am the petitioner in this petition. I have personal knowledge of all facts stated herein. If called as a witness, I could and would competently testify thereto.

2. During the process of exhausting my claims in state courts, I consistently provided regular updates to Butera by serving him with copies of my filings made in those state courts. The latest one was my filings with California Supreme Court. A true and correct copy of the electronic service is attached hereto as Exhibit 1.

3. After the *Rhines* stay was lifted, on May 31, 2023, I requested Butera's written consent to amend my petition pursuant to FRCP Rule 15(a)(2). In my email to Butera, I requested Butera's response by June 3, 2023. Butera never responded to my email, nor did he ask for more time to respond. However, my email has alerted Butera about the forthcoming amended petition and the case not being stayed. If Butera truly had stopped receiving ECF notifications since May 22, 2023 as he claimed, after receiving my email on May 31, 2023, it would have been incumbent upon him to discover the malfunction in the ECF notifications. A true and correct copy of the correspondence is attached hereto as Exhibit 2.

4. I have not been electronically served by CM/ECF system with any documents in this case. Respondent served me by mail its motion for an extension of time to file response to the amended petition. As of July 31, 2023 I had not received Respondent's motion for an extension of time to file response to the amended petition in the mail. I found out the motion by going on Pacer on July 29, 2023.

5. A courtesy copy of this document was directly sent to [michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov).

I declare under penalty of perjury under the laws of the State of California and

1 United States of America that the foregoing is true and correct.

2  
3 Executed in Rosemead, CA on August 1, 2023.

4 /s/ XINGFEI LUO  
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**CERTIFICATE OF SERVICE**

I declare that I electronically filed the foregoing with the United States District Court, Central District of California. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

In addition, I electronically served the foregoing to the following email address:

[michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov)

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on August 1, 2023

/s/ XINGFEI LUO

XINGFEI LUO, In Pro Per



## EXHIBIT 1



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## In Re Luo S278439

**From:** CPRArq@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Apr 5, 2023 10:39:34 PM

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FYI

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### Attachments

- 20230405 Supplement.pdf



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## Habeas petition exhibit VIII

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Feb 1, 2023 9:42:44 PM

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FYI

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### Attachments

- 20230201 Writ exhibits VIII.pdf



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## Habeas petition

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Feb 1, 2023 9:41:40 PM

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FYI

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### Attachments

- 20230201 hc001 PETITION FOR WRIT OF HABEAS CORPUS.pdf
- 20230201 Writ exhibits VI.pdf
- 20230201 Writ exhibits VII.pdf

## EXHIBIT 2



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## Request for Consent to Amend Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** May 31, 2023 8:46:42 PM

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Dear Mr. Butera,

I hope this email finds you well. I am writing to you in my capacity as the petitioner in the case No. 8:22-cv-01640 pending before California Central District Court. Pursuant to FRCP Rule 15(a)(2), which governs the amendment of pleadings, I am seeking your written consent to amend my Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus.

As you may be aware, Rule 15(a)(2) provides that a party may amend its pleading only with the opposing party's written consent or the court's leave. Recognizing the importance of collaboration and transparency in the pursuit of justice, I believe that an amendment to my petition would be in the best interests of both parties and the court. It would allow for a more comprehensive presentation of the issues and could potentially facilitate a more efficient resolution of this matter.

I would like to inform you that the proposed amendment seeks to add a new claim based on recently discovered issue that has been presented to the California Supreme Court. ECF 21. This claim would strengthen my arguments in challenging the constitutionality of my conviction. In accordance with the principles of fairness and due process, I believe that this amendment is necessary to fully and adequately present my claims.

I kindly request that you carefully review the proposed amendment, as attached, and consider providing your written consent to their inclusion in my petition. This collaborative approach would not only streamline the litigation process but also demonstrate my commitment to a thorough and robust examination of the issues at hand.

If you have any concerns or objections regarding the proposed amendment, I encourage you to express them in writing as soon as possible so that I may address them and attempt to reach a resolution. Alternatively, if you believe that the court's leave is necessary for the amendment, kindly inform me of your intention so that I may take appropriate steps to seek the court's permission.

Please note that my request for amendment is made in good faith and with the utmost respect for the legal process. I believe that an open dialogue and cooperative approach will serve the interests of both parties and contribute to the fair and just resolution of this case.

I look forward to your prompt response by the end of this week and sincerely hope that we can find common ground to proceed with the proposed amendment. Should you have any questions or require further clarification, please do not hesitate to contact me.

Thank you for your attention to this matter.

Luo

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**Attachments**



- Appendix.pdf
- First amended petition.pdf